

By Senator Farmer

34-01474-17

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1                   A bill to be entitled  
2           An act relating to insurance rates; amending s.  
3           627.062, F.S.; providing that certain attorney fees,  
4           costs, and expenses may not be considered expenses by  
5           the Office of Insurance Regulation when the office is  
6           determining whether a rate is excessive, inadequate,  
7           or unfairly discriminatory; providing that certain  
8           attorney fees, costs, and expenses may not be included  
9           in an insurer's rate base and may not be used to  
10          justify a rate or rate change; amending s. 627.0651,  
11          F.S.; providing that certain attorney fees, costs, and  
12          expenses may not be included in a motor vehicle  
13          insurer's rate base and may not be used to justify a  
14          rate or rate change; amending s. 627.072, F.S.;  
15          providing that as to workers' compensation and  
16          employer's liability insurance, certain attorney fees,  
17          costs, and expenses may not be included in an  
18          insurer's rate base and may not be used to justify a  
19          rate or rate change; amending s. 627.410, F.S.;  
20          providing that certain attorney fees, costs, and  
21          expenses may not be included in an insurer's rate base  
22          and may not be used to justify a rate or rate change;  
23          amending s. 627.428, F.S.; providing that certain  
24          attorney fees, costs, and expenses may not be included  
25          in an insurer's rate base and may not be used to  
26          justify a rate or rate change; amending s. 627.640,  
27          F.S.; providing that certain attorney fees, costs, and  
28          expenses may not be included in an insurer's rate;  
29          providing an effective date.

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Be It Enacted by the Legislature of the State of Florida:

Section 1. Paragraph (b) of subsection (2) of section 627.062, Florida Statutes, is amended, and subsection (11) is added to that section, to read:

627.062 Rate standards.—

(2) As to all such classes of insurance:

(b) Upon receiving a rate filing, the office shall review the filing to determine if a rate is excessive, inadequate, or unfairly discriminatory. In making that determination, the office shall, in accordance with generally accepted and reasonable actuarial techniques, consider the following factors:

1. Past and prospective loss experience within and without this state.

2. Past and prospective expenses. Attorney fees, costs, and expenses associated with any adversarial proceeding against an insured or named beneficiary may not be considered as expenses.

3. The degree of competition among insurers for the risk insured.

4. Investment income reasonably expected by the insurer, consistent with the insurer's investment practices, from investable premiums anticipated in the filing, plus any other expected income from currently invested assets representing the amount expected on unearned premium reserves and loss reserves. The commission may adopt rules using reasonable techniques of actuarial science and economics to specify the manner in which insurers calculate investment income attributable to classes of insurance written in this state and the manner in which

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59 investment income is used to calculate insurance rates. Such  
60 manner must contemplate allowances for an underwriting profit  
61 factor and full consideration of investment income that produces  
62 a reasonable rate of return; however, investment income from  
63 invested surplus may not be considered.

64 5. The reasonableness of the judgment reflected in the  
65 filing.

66 6. Dividends, savings, or unabsorbed premium deposits  
67 allowed or returned to policyholders, members, or subscribers in  
68 this state.

69 7. The adequacy of loss reserves.

70 8. The cost of reinsurance. The office may not disapprove a  
71 rate as excessive solely due to the insurer having obtained  
72 catastrophic reinsurance to cover the insurer's estimated 250-  
73 year probable maximum loss or any lower level of loss.

74 9. Trend factors, including trends in actual losses per  
75 insured unit for the insurer making the filing.

76 10. Conflagration and catastrophe hazards, if applicable.

77 11. Projected hurricane losses, if applicable, which must  
78 be estimated using a model or method found to be acceptable or  
79 reliable by the Florida Commission on Hurricane Loss Projection  
80 Methodology, and as further provided in s. 627.0628.

81 12. Projected flood losses for personal residential  
82 property insurance, if applicable, which may be estimated using  
83 a model or method, or a straight average of model results or  
84 output ranges, independently found to be acceptable or reliable  
85 by the Florida Commission on Hurricane Loss Projection  
86 Methodology and as further provided in s. 627.0628.

87 13. A reasonable margin for underwriting profit and

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88 contingencies.

89 14. The cost of medical services, if applicable.

90 15. Other relevant factors that affect the frequency or  
91 severity of claims or expenses.

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93 The provisions of this subsection do not apply to workers'  
94 compensation, employer's liability insurance, and motor vehicle  
95 insurance.

96 (11) Attorney fees, costs, and expenses associated with any  
97 adversarial proceeding against an insured or named beneficiary  
98 may not be included in the insurer's rate base and may not be  
99 used to justify a rate or rate change.

100 Section 2. Subsection (15) is added to section 627.0651,  
101 Florida Statutes, to read:

102 627.0651 Making and use of rates for motor vehicle  
103 insurance.—

104 (15) Attorney fees, costs, and expenses associated with any  
105 adversarial proceeding against an insured or named beneficiary  
106 may not be included in the insurer's rate base and may not be  
107 used to justify a rate or rate change.

108 Section 3. Subsection (6) is added to section 627.072,  
109 Florida Statutes, to read:

110 627.072 Making and use of rates.—

111 (6) Attorney fees, costs, and expenses associated with any  
112 adversarial proceeding against a claimant may not be included in  
113 an insurer's rate base and may not be used to justify a rate or  
114 rate change.

115 Section 4. Subsection (9) is added to section 627.410,  
116 Florida Statutes, to read:

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117 627.410 Filing, approval of forms.—

118 (9) Attorney fees, costs, and expenses associated with any  
119 adversarial proceeding against an insured or named beneficiary  
120 may not be used to justify a rate or rate change.

121 Section 5. Section 627.428, Florida Statutes, is amended to  
122 read:

123 627.428 Attorney ~~Attorney's~~ fee.—

124 (1) Upon the rendition of a judgment or decree by any of  
125 the courts of this state against an insurer and in favor of any  
126 named or omnibus insured or the named beneficiary under a policy  
127 or contract executed by the insurer, the trial court or, in the  
128 event of an appeal in which the insured or beneficiary prevails,  
129 the appellate court shall adjudge or decree against the insurer  
130 and in favor of the insured or beneficiary a reasonable sum as  
131 fees or compensation for the insured's or beneficiary's attorney  
132 prosecuting the suit in which the recovery is had.

133 (2) As to suits based on claims arising under life  
134 insurance policies or annuity contracts, no such attorney fees  
135 ~~attorney's fee~~ shall be allowed if such suit was commenced prior  
136 to expiration of 60 days after proof of the claim was duly filed  
137 with the insurer.

138 (3) When so awarded, compensation or fees of the attorney  
139 shall be included in the judgment or decree rendered in the  
140 case.

141 (4) Attorney fees paid pursuant to this section may not be  
142 included in the insurer's rate base and may not be used to  
143 justify a rate or rate change.

144 (5) Attorney fees paid by an insurer to its attorneys for  
145 prosecuting or defending an action that could cause attorney

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146 fees to be awarded pursuant to this section may not be included  
147 in the insurer's rate base and may not be used to justify a rate  
148 or rate change.

149 Section 6. Section 627.640, Florida Statutes, is amended to  
150 read:

151 627.640 Filing of classifications and rates.—

152 (1) An insurer shall not deliver or issue for delivery in  
153 this state any health insurance policy until it has filed with  
154 the office a copy of any applicable classification of risks and  
155 premium rates.

156 (2) Attorney fees, costs, and expenses associated with any  
157 adversarial proceeding against an insured or named beneficiary  
158 may not be included in the insurer's rate.

159 Section 7. This act shall take effect July 1, 2017.